

REMARKS

Applicants respectfully request reconsideration of the instant application in view of the foregoing amendments and the following remarks. Claims 98-111, 113-125, 127-137, 139-150, 152-163, 165, 167-177, 179 and 181-182 were previously pending in the application. Claims 98, 113, 127, 139, 152, 168 and 182 are amended herein. Applicants submit that support for the foregoing amendments may be found throughout the specification and that no new matter has been added by way of this amendment. Applicants explicitly reserve the right to add/pursue the claims as originally filed at a later date and/or in a continuation application. Applicants have amended the claims to better capture disclosed embodiments of interest and address informalities within the claim language as discussed below. Furthermore, Applicants submit that the amended claims, as well as the originally filed claims are patentably distinct from the cited references.

Rejections Under 35 U.S.C. §112

Claims 98, 113, 127, 139, 152 and 168 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. More specifically, the Examiner maintained his earlier assertion that, "Applicant does not explain how a payment is guaranteed." (See, Office Action, page 2, last paragraph).

Applicants request clarification of the Examiner's remarks from the pending Office Action, "In response, the Office prohibits the Examiner from expressing an opinion concerning an issued patent", (see, Office Action, page 12, last paragraph). Applicants believe the Examiner is attempting to address the Applicants' remarks from the Amendment/Response dated May 14, 2007. More specifically, Applicants noted that none of the three previous Office Actions issued by the Examiner in this application, indicated that

the term “guaranteed” was indefinite or unclear. (See, Response/Amendment dated May 14, 2007, page 15, ¶ 4; and Office Actions dated March 15, 2004, June 2, 2003 and September 4, 2002.) Applicants are not suggesting that the term is clear based on its use in unrelated issued patents, but instead on the fact that the Examiner who issued the pending Office Action, had not indicated the term rendered the claim indefinite in any of the three initial Office Actions. Furthermore, Applicants request clarification as to how the term allegedly renders the claim indefinite per § 112, second paragraph.

Accordingly, Applicants believe the claim language is clear and definite with per § 112, second paragraph and request withdrawal of these grounds of rejections for at least these reasons.

Rejections under 35 U.S.C. § 103

Claims 98-111, 113-125, 127-137, 139-150, 152-163, 165, 167-177, 179 and 181-182 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Charles Boisseau, "Netting cheap fares/Some are taking cyberspace route" (hereinafter "Boisseau"), in view of Chung et al. (US Patent No. 5,644,721) (hereinafter "Chung"). Applicants respectfully traverse the rejections and submit that a prima facie case of obviousness has not been established.

Amended independent claim 98 recites, inter alia:

98. A system, comprising:...

- a processor in communication with said storage device, said processor operative with said program to...
- receive a conditional purchase offer including an offer price from a customer utilizing said web page for purchasing travel services...
- compare said conditional purchase offer with seller inventory and seller pricing information stored on a central reservation system to determine if said conditional purchase offer is acceptable...

Applicants submit that Boisseau does not discuss at least: (1) receiving a conditional purchase offer from a customer or (2) comparing a conditional purchase offer with seller inventory and seller pricing information stored on a central reservation system to determine if the conditional purchase offer is acceptable.

I. Boisseau and/or Chung do not anticipate or render obvious the claim elements

Applicants respectfully submit that the Examiner has over generalized what Boisseau discloses. On page 4 of the pending Office Action, the Examiner asserts a Boisseau's statement that "nearly two thirds of an airlines seats go empty...." somehow discloses the claimed element "comparing the conditional purchase offer with seller inventory..." Similarly, the Examiner asserts comparing the conditional purchase offer pricing information is disclosed in Boisseau's "references to full price for first class seats, \$475 paid + \$3700 saved = \$4175 total." (See Office Action, page 4, ¶ 4) However, Applicants submit the Examiner has over generalized Boisseau's discussion of characteristics of an auction system. More specifically, Applicants submit that going back after various seats are sold to determine that two-thirds of airline seats go empty and calculating the savings for a discounted ticket do not disclose at least the claimed element:

compare said conditional purchase offer with seller inventory and seller pricing information stored on a central reservation system to determine if said conditional purchase offer is acceptable....

Instead of disclosing the claimed elements as asserted by the Examiner, Boisseau discusses how airlines sell tickets via auctions conducted online and publicize last minute fare deals by e-mail (see, Boisseau, page 2, ¶ 2 and ¶ 12-14). Applicants submit that Boisseau's auction for a seat or Boisseau's email describing a low-cost/discounted airfare do not anticipate or render obvious the elements recited in independent claim 98. More

specifically, Applicants submit that a bid in an auction, as described in Boisseau, is simply not a conditional purchase offer (CPO). Furthermore, Boisseau discusses that airlines (sellers) specify seats on specific flights to be auctioned and at the end of an auction the specified seats are awarded to the highest bidder(s). In Boisseau's auction, a buyer's bid is compared with other buyers' bids to determine which buyer is the highest bidder and thus the winner of the auction. At no time does Boisseau discuss comparing the buyer's bid with seller's inventory or seller's pricing information, as claimed.

Furthermore, regarding Boisseau's emailed discounted fares, again the CPO is not compared with seller's inventory or seller's pricing information, as claimed. Instead, in response to receiving an email offer from the seller, Boisseau's buyer would simply go to the airline's specific website to purchase the fare advertised in the email. Accordingly, Boisseau's description of an auction and emailed discounted fares do not discuss or render obvious: (1) receiving a CPO and/or (2) comparing a CPO with seller inventory and seller pricing to determine whether the CPO is acceptable, as claimed. Furthermore, Applicants submit that Chung's multiple currency travel reservation information management system fails to remedy the deficiencies identified above in Boisseau.

Accordingly, Applicants submit that the Examiner has failed to establish that the references taken alone or in combination, discuss or render obvious each and every claim element recited in independent claim 98. Should the Examiner disagree, Applicants respectfully request the Examiner discuss with particularity how Boisseau discusses or renders obvious:

- (1) receiving a conditional purchase offer from a customer;
and
- (2) comparing a conditional purchase offer with seller inventory and seller pricing information stored on a central reservation system to determine if the conditional purchase offer is acceptable.

Applicants further submit that independent claims 113, 127, 139, 152, 168 and 182 are also patentably distinct from the cited references, for at least the reasons discussed above. Similarly, Applicants submit that claims 99-111, 114-125, 128-137, 140-150, 153-163, 165, 167, 169-177, 179 and 181 (which are directly or indirectly dependent on independent claims 98, 113, 127, 139, 152, 168 and 182, respectively), are also patentably distinct from the cited references, taken alone or in combination, for at least similar reasons.

For at least these reasons, Applicants submit that a prima facie case of obviousness has not been established and that the pending claims are not rendered obvious by the cited references. Therefore, Applicants respectfully request withdrawal of these grounds of rejections.

II. The Examiner has not established a prima facie case of obviousness

On page 13 of the pending Office Action, the Examiner asserts that a prima facie case of obviousness has been established and alleges that the Graham rules have been applied. More specifically, the Examiner states, "(A) the claimed invention has been considered as a whole. (B) Boisseau and Chung have been considered as a whole and suggest the desirability and thus the obviousness of making the combination...." (See Office Action, page 13, ¶ 1-2).

However, Applicants submit that in light of the deficiencies in Boisseau discussed above, the Examiner has not established that Boisseau or Chung, taken alone or in combination anticipate or render obvious the claimed invention. Applicants have specifically noted several deficiencies in the Examiner's characterization of Boisseau, with regard to the claimed elements. As such, Applicants are not arguing that the cited references are "nonanalogous art" as alleged by the Examiner. (See Office Action, page 13, ¶ 3). Instead, Applicants submit that the cited references have been over generalized and mischaracterized by the Examiner. Applicants submit that the portions of the cited references relied on by the Examiner as "disclosing" various claim

elements do not discuss or render obvious the elements recited in the claims. If the basis of a rejection is made through a mischaracterization, per se, it is not possible that a prima facie case has been established. Accordingly, Applicants submit that at no time has a prima facie case of obviousness been established.

As the Examiner has not established the prima facie obviousness for the claims, it is also not possible that the alleged modifications/elements could have been "well known", within the context of the claimed elements taken as a whole, taken at the time the application was filed. For example, the Examiner alleges that "the use of debit accounts is notoriously well known." (See, Office Action, page 8, ¶2, discussing dependent claim 107). In the same way prima facie obvious is not established based on mischaracterizations, Official Notice based on underlying mischaracterizations must also fail. As such, it is simply not possible to establish what would be "old or well known" based on the Examiner's mischaracterization of Boisseau.

Therefore, Applicants maintain the position that there have been no admissions regarding the alleged admitted prior art, as the underlying rejections have been improper. Applicants traverse the Examiner's various instances of alleged official notice; and request documentary evidence in support of the Examiner's position, in accordance with MPEP 2144.03(C) that these alleged missing elements were in fact "old or well known" - within the context of the claimed elements taken as a whole, without the use of impermissible hindsight.

Conclusion

Consequently, the references cited and/or any official notice taken by the office action do not result in the claimed invention, there was/is no motivation for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed inventions are not admitted to be prior art. Thus, Applicants respectfully submit that the supporting remarks and claimed inventions, the pending claims, all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicants believe that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements were not discussed, Applicants do not concede that any such elements are found in the prior art and/or within any official notice taken in the office action, and as such, Applicants assert that all such remaining and not discussed claim elements, all, also are distinguished over the prior art, including any official notice taken in the office action, and explicitly reserves the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary. Further, any remarks that were made in response to an Examiner objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Examiner objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements, and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicants do not concede that any claim elements have been anticipated and/or rendered

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obvious by any of the cited reference(s). Accordingly, Applicants respectfully request allowance, and the reconsideration and withdrawal of the rejection(s) and/or objection(s).

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 03-1240, Order No. 17200-020CT3.

In the event that an additional extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 03-1240, Order No. 17200-020CT3.

Respectfully submitted,
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